

Gordon & Rees LLP
Embarcadero Center West
275 Battery Street, Suite 2000
San Francisco, CA 94111

MICHAEL D. BRUNO (SBN: 166805)
JON C. YONEMITSU (SBN: 199026)
GORDON & REES LLP
Embarcadero Center West
275 Battery Street, Suite 2000
San Francisco, CA 94111
Telephone: (415) 986-5900
Facsimile: (415) 986-8054

Attorneys for Defendants
SUSHI BISTRO, INC., JEFFERY LAU
And SOPHIE LAU (erroneously sued as SOPHIA
LAU)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CRAIG YATES, an individual; and)	CASE NO. CV08-2545 CW
DISABILITY RIGHTS, ENFORCEMENT,)	
EDUCATION, SERVICES: HELPING YOU)	
HELP OTHERS, a California public benefit)	DEFENDANTS' ANSWER TO
corporation,)	COMPLAINT FOR INJUNCTIVE
)	RELIEF AND DAMAGES
Plaintiffs)	
)	
vs.)	
)	
SUSHI BISTRO, INC., a California corporation;)	
JEFFERY LAU; and SOPHIA LAU,)	
)	
Defendants.)	
)	

Defendants SUSHI BISTRO, INC., JEFFERY LAU and SOPHIE LAU (erroneously sued as SOPHIA LAU) (collectively referred to as "Defendants") answers plaintiff's complaint as follows and demand a jury trial as follows:

INTRODUCTION

1. Defendants do not have sufficient information at this time to either admit or deny the allegations in paragraph 1 and on that basis denies them.

2. Defendants do not have sufficient information at this time to either admit or deny the allegations in paragraph 2 and on that basis denies them.

//

JURISDICTION AND VENUE

3. Defendants admit the jurisdiction is proper and therefore admit the allegations of paragraph 3.

4. Defendants admit that venue is proper. Defendants do not, however, have sufficient information at this time to either admit or deny the remaining allegations in paragraph 4 and on that basis denies them.

PARTIES

5. Defendants do not have sufficient information at this time to either admit or deny the allegations in paragraph 5 and on that basis denies them.

6. Defendants do not have sufficient information at this time to either admit or deny the allegations in paragraph 6 and on that basis denies them.

7. Defendants do not have sufficient information at this time to either admit or deny the allegations in paragraph 7 and on that basis denies them.

8. Defendants admit SUSHI BISTRO, INC. is incorporated under the laws of the State of California and that JEFFERY and SOPHIE LAU are the current lessors of the establishment known as SUSHI BISTRO located at 445 Balboa Street in San Francisco, California. Defendants deny, however, each and every other allegation contained in paragraph 8.

9. Defendants deny each and every allegation contained in paragraph 9.

10. Defendant do not have sufficient information at this time to either admit or deny the allegations in paragraph 10 and on that basis denies them.

PRELIMINARY FACTUAL ALLEGATIONS

11. Defendants admit the establishment known as SUSHI BISTRO is located at 445 Balboa Street in San Francisco, California. Defendants do not have, however, have sufficient information at this time to either admit or deny the remaining allegations in paragraph 11 and on that basis denies them.

12. Defendants do not have sufficient information at this time to either admit or deny the allegations in paragraph 12 and on that basis denies them.

13. Defendants do not have sufficient information at this time to either admit or deny

Gordon & Rees LLP
Embarcadero Center West
275 Battery Street, Suite 2000
San Francisco, CA 94111

1 the allegations in paragraph 13 and on that basis denies them.

2 14. Defendants do not have sufficient information at this time to either admit or deny
3 the allegations in paragraph 14 and on that basis denies them.

4 15. Defendants do not have sufficient information at this time to either admit or deny
5 the allegations in paragraph 15 and on that basis denies them.

6 16. Defendants do not have sufficient information at this time to either admit or deny
7 the allegations in paragraph 16 and on that basis denies them.

8 17. Defendants do not have sufficient information at this time to either admit or deny
9 the allegations in paragraph 17 and on that basis denies them.

10 18. Defendants do not have sufficient information at this time to either admit or deny
11 the allegations in paragraph 18 and on that basis denies them.

12 19. Defendants do not have sufficient information at this time to either admit or deny
13 the allegations in paragraph 19 and on that basis denies them.

14 20. Defendants do not have sufficient information at this time to either admit or deny
15 the allegations in paragraph 20 and on that basis denies them.

16 21. Defendants do not have sufficient information at this time to either admit or deny
17 the allegations in paragraph 21 and on that basis denies them.

18 22. Defendants do not have sufficient information at this time to either admit or deny
19 the allegations in paragraph 22 and on that basis denies them.

20 23. Defendants do not have sufficient information at this time to either admit or deny
21 the allegations in paragraph 23 and on that basis denies them.

22 24. Defendants do not have sufficient information at this time to either admit or deny
23 the allegations in paragraph 24 and on that basis denies them.

24 25. Defendants do not have sufficient information at this time to either admit or deny
25 the allegations in paragraph 25 and on that basis denies them.

26 26. Defendants do not have sufficient information at this time to either admit or deny
27 the allegations in paragraph 26 and on that basis denies them.

28 27. Defendants do not have sufficient information at this time to either admit or deny

Gordon & Rees LLP
Embarcadero Center West
275 Battery Street, Suite 2000
San Francisco, CA 94111

1 the allegations in paragraph 27 and on that basis denies them.

2 28. Defendants do not have sufficient information at this time to either admit or deny
3 the allegations in paragraph 28 and on that basis denies them.

4 29. Defendants do not have sufficient information at this time to either admit or deny
5 the allegations in paragraph 29 and on that basis denies them.

6 30. Defendants do not have sufficient information at this time to either admit or deny
7 the allegations in paragraph 30.

8 31. Defendants do not have sufficient information at this time to either admit or deny
9 the allegations in paragraph 31.

10 32. Defendants do not have sufficient information at this time to either admit or deny
11 the allegations in paragraph 32.

12 33. Defendants do not have sufficient information at this time to either admit or deny
13 the allegations in paragraph 33 and on that basis denies them.

14 34. Defendants do not have sufficient information at this time to either admit or deny
15 the allegations in paragraph 34.

16 35. Defendants do not have sufficient information at this time to either admit or deny
17 the allegations in paragraph 30not have sufficient information at this time to either admit or deny
18 the allegations in paragraph 35.

19 36. Defendants do not have sufficient information at this time to either admit or deny
20 the allegations in paragraph 36 and on that basis denies them.

21 37. Defendants do not have sufficient information at this time to either admit or deny
22 the allegations in paragraph 37 and on that basis denies them.

23 38. Defendants do not have sufficient information at this time to either admit or deny
24 the allegations in paragraph 38 and on that basis denies them.

25 39. Defendants do not have sufficient information at this time to either admit or deny
26 the allegations in paragraph 39 and on that basis denies them.

27 40. Defendants do not have sufficient information at this time to either admit or deny
28 the allegations in paragraph 40 and on that basis denies them.

Gordon & Rees LLP
Embarcadero Center West
275 Battery Street, Suite 2000
San Francisco, CA 94111

41. Defendants do not have sufficient information at this time to either admit or deny the allegations in paragraph 41 and on that basis denies them.

42. Defendants do not have sufficient information at this time to either admit or deny the allegations in paragraph 42 and on that basis denies them.

43. Defendants do not have sufficient information at this time to either admit or deny the allegations in paragraph 43 and on that basis denies them.

44. Defendants do not have sufficient information at this time to either admit or deny the allegations in paragraph 44 and on that basis denies them.

I. FIRST CAUSE OF ACTION FOR DENIAL OF ACCESS BY A PUBLIC ACCOMMODATION IN VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990 (42 U.S.C. § 12101, et seq.)

45. There are no material allegations in paragraph 45.

46. There are no material allegations in paragraph 46.

47. There are no material allegations in paragraph 47.

48. There are no material allegations in paragraph 48.

49. There are no material allegations in paragraph 49.

50. There are no material allegations in paragraph 50 except for those contained in the last sentence, and for that sentence Defendants do not have sufficient information at this time to either admit or deny the allegations in paragraph 50 and on that basis denies them.

51. Defendants do not have sufficient information at this time to either admit or deny the allegations in paragraph 51 and on that basis denies them.

52. Defendants do not have sufficient information at this time to either admit or deny the allegations in paragraph 52 and on that basis denies them.

53. Defendants do not have sufficient information at this time to either admit or deny the allegations in paragraph 53 and on that basis denies them.

54. Defendants do not have sufficient information at this time to either admit or deny the allegations in paragraph 54 and on that basis denies them.

55. There are no material allegations in paragraph 55 except for the second sentence,

Gordon & Rees LLP
Embarcadero Center West
275 Battery Street, Suite 2000
San Francisco, CA 94111

and for that sentence Defendants do not have sufficient information at this time to either admit or deny the allegations in paragraph 55 and on that basis denies them.

56. Defendants do not have sufficient information at this time to either admit or deny the allegations in paragraph 56 and on that basis denies them.

II. SECOND CAUSE OF ACTION FOR DENIAL OF FULL AND EQUAL ACCESS IN VIOLATION OF CALIFORNIA CIVIL CODE § 54, 54.1 AND 54.3, et seq.

57. There are no material allegations in paragraph 57.

58. There are no material allegations in paragraph 58.

59. There are no material allegations in paragraph 59.

60. There are no material allegations in paragraph 60.

61. Defendants do not have sufficient information at this time to either admit or deny the allegations in paragraph 61 and on that basis denies them.

62. Defendants do not have sufficient information at this time to either admit or deny the allegations in paragraph 62 and on that basis denies them.

63. Defendants do not have sufficient information at this time to either admit or deny the allegations in paragraph 63 and on that basis denies them.

64. Defendants do not have sufficient information at this time to either admit or deny the allegations in paragraph 64 and on that basis denies them.

65. Defendants do not have sufficient information at this time to either admit or deny the allegations in paragraph 65 and on that basis denies them.

66. Defendants do not have sufficient information at this time to either admit or deny the allegations in paragraph 66 and on that basis denies them.

67. Defendants do not have sufficient information at this time to either admit or deny the allegations in paragraph 67 and on that basis denies them.

III. THIRD CAUSE OF ACTION FOR DENIAL OF ACCESSIBLE SANITARY FACILITIES IN VIOLATION OF HEALTH & SAFETY CODE § 19955, et seq.

68. There are no material allegations in paragraph 68.

69. There are no material allegations in paragraph 69.

Gordon & Rees LLP
Embarcadero Center West
275 Battery Street, Suite 2000
San Francisco, CA 94111

70. Defendants do not have sufficient information at this time to either admit or deny the allegations in paragraph 70 and on that basis denies them.

71. Defendants do not have sufficient information at this time to either admit or deny the allegations in paragraph 71 and on that basis denies them.

72. Defendants do not have sufficient information at this time to either admit or deny the allegations in paragraph 72 and on that basis denies them.

73. Defendants do not have sufficient information at this time to either admit or deny the allegations in paragraph 73 and on that basis denies them.

74. Defendants do not have sufficient information at this time to either admit or deny the allegations in paragraph 74 and on that basis denies them.

75. Defendants do not have sufficient information at this time to either admit or deny the allegations in paragraph 75 and on that basis denies them.

IV. FOURTH CAUSE OF ACTION FOR DENIAL OF ACCESS TO FULL AND EQUAL ACCOMMODATIONS, ADVANTAGES, FACILITIES, PRIVILEGES AND/OR SERVICES IN VIOLATION OF CALIFORNIA CIVIL CODE § 51, et seq. (THE UNRUH CIVIL RIGHTS ACT)

76. There are no material allegations in paragraph 76.

77. Defendants do not have sufficient information at this time to either admit or deny the allegations in paragraph 77 and on that basis denies them.

78. Defendants do not have sufficient information at this time to either admit or deny the allegations in paragraph 78 and on that basis denies them.

79. Defendants do not have sufficient information at this time to either admit or deny the allegations in paragraph 79 and on that basis denies them.

80. Defendants do not have sufficient information at this time to either admit or deny the allegations in paragraph 80 and on that basis denies them.

81. Defendants do not have sufficient information at this time to either admit or deny the allegations in paragraph 80 and on that basis denies them.

PRAYER

To the extent there are material allegations below the "Prayer" in the complaint,

1 Defendants do not have sufficient information at this time to either admit or deny those
2 allegations and on that basis denies them.

3 **AFFIRMATIVE DEFENSES**

4 Defendants allege the following affirmative defenses:

5 **FIRST AFFIRMATIVE DEFENSE**

6 Defendants allege that the complaint and each of its purported causes of action fail to
7 state facts sufficient to constitute a cause of action against this answering defendant.

8 **SECOND AFFIRMATIVE DEFENSE**

9 Defendants allege that the complaint and each of its purported causes of action are barred
10 by the applicable statutes of limitations, including, but not limited to, California Code of Civil
11 Procedure sections 337, 338, 339, 340, 343 and California Government Code sections 12960 and
12 12965(b).

13 **THIRD AFFIRMATIVE DEFENSE**

14 Defendants allege that plaintiff has failed to mitigate his damages and is barred from
15 recovering such damages.

16 **FOURTH AFFIRMATIVE DEFENSE**

17 Defendants allege that their conduct with respect to the plaintiff and his use of the
18 premises was at all times reasonable, in complete good faith based upon a good cause, and
19 motivated solely by legitimate considerations.

20 **FIFTH AFFIRMATIVE DEFENSE**

21 Defendants allege that plaintiff's claims are barred by the doctrine of laches.

22 **SIXTH AFFIRMATIVE DEFENSE**

23 Defendants allege that plaintiff is not a qualified individual with a disability or handicap
24 as defined by the Rehabilitation Act or the Americans with Disabilities Act and applicable
25 federal regulations.

26 **SEVENTH AFFIRMATIVE DEFENSE**

27 Defendants allege that they reasonably accommodated plaintiff to the extent required by
28 applicable laws and regulations.

EIGHTH AFFIRMATIVE DEFENSE

Defendants allege that all of their actions were taken in good faith and in reliance on the reasonable belief that they were lawful.

NINTH AFFIRMATIVE DEFENSE

Defendants allege that plaintiff's claims are barred by reason of an adequate state remedy available to plaintiffs to redress their claims.

TENTH AFFIRMATIVE DEFENSE

Defendants allege that removal of the barriers about which plaintiff complains was not readily achievable.

ELEVENTH AFFIRMATIVE DEFENSE

Defendants allege that the remedies for the barriers about which plaintiffs complain were unduly burdensome.

TWELFTH AFFIRMATIVE DEFENSE

Defendants allege that the barriers about which plaintiff complains could not have been remediated without substantial and unreasonable alterations.

THIRTEENTH AFFIRMATIVE DEFENSE

Defendants allege that the plaintiff does not have standing to bring the claims alleged in the complaint.

FOURTEENTH AFFIRMATIVE DEFENSE

Defendants allege that insofar as Defendants have not made the alterations to the subject premises of which plaintiff complains, those alterations were not and are not required to be made by Defendants under applicable laws and regulations, and/or would impose an undue burden on Defendants.

FIFTEENTH AFFIRMATIVE DEFENSE

Defendants allege that they had neither actual nor constructive notice of any architectural or other unlawful barriers, and if such barriers existed, they were not the proximate cause of plaintiff's injuries, if any.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

Defendants reserve the right to allege other affirmative defenses as they may arise during the course of discovery.

GORDON & REES, LLP

By: / s /
MICHAEL D. BRUNO
JON C. YONEMITSU
Attorneys For Defendants SUSHI BISTRO,
INC., JEFFERY LAU and SOPHIE LAU
(erroneously sued as SOPHIA LAU)